

From: Dan Cohen
To: Microsoft ATR
Date: 1/23/02 1:47pm
Subject: Microsoft Settlement

Dear Judge Kollar-Kotelly,

The proposed settlement between Microsoft and the DOJ is inadequate and should be rejected.

The settlement fails to levy any fine against Microsoft. Microsoft should be forced to relinquish any ill-gotten gains from its illegal behavior. Any revenue gained from the sale of products or services that could not have been sold if Microsoft had not illegally extended and maintained its monopoly should count towards these "gains". Interest on the revenue should count too.

All of this money should be given back. It is likely that the amount is in the tens of billions of dollars. So be it. The fine must be large enough to effect a behavioral change on Microsoft's part, otherwise it will be seen as a mere "cost of doing business." Corporate crime must not pay.

In addition to the aforementioned omission, the existing terms of the proposed settlement have multiple flaws. The most significant are these two:

1. The Technical Committee put in place by the terms of the settlement would have no real enforcement authority. It cannot fine Microsoft for noncompliance. It cannot make public statements about its activities. Without either ability, it is unlikely that it will be able to change Microsoft's behavior in any way.

At best, the Technical Committee can extend the terms of the final judgement for two additional years. Since the TC's enforcement powers are insufficient, extending the duration of enforcement would be senseless and a waste of taxpayer money.

2. Microsoft may withhold technical information on "security" grounds. However, security is a pervasive aspect of technology at all levels. Thus the loophole of section J.1(a) is total.

Failing to provide an adequate punishment for a major corporate criminal will set a bad precedent for future cases, including whatever cases may emerge from the Enron debacle. No corporation, no matter how influential or economically significant, should be above the law.

Yours Truly,

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